Supreme Court, U. S.
FILED
DEC 13 1979
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1

AMERICAN EXPORT LINES, INC.,

Petitioner,

v.

GILBERTO ALVEZ AND
JOSEPH VINAL SHIP MAINTENANCE, INC.,

Respondents.

ON WRIT OF CERTIORARI TO THE
NEW YORK COURT OF APPEALS

PETITION FOR CERTIORARI FILED JULY 2, 1979
CERTIORARI GRANTED OCTOBER 29, 1979

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APPENDIX A

Order of New York State Supreme Court,
Special Term, New York County

(August 17, 1976)

GILBERTO ALVEZ,

—against—

AMERICAN EXPORT LINES, INC.

The following papers numbered 1 to 9 read on this motion, No. 188 on Calendar of June 2, 1976.

	PAPERS NUMBERED
Notice of Motion—Order to Show Cause— and Affidavits Annexed	1–7
Answering Affidavit	8
Replying Affidavit	9

Upon the foregoing papers this Motion by the plaintiff for permission to amend his complaint and bill of particulars to assert a cause of action for loss of consortium is denied.

It is conceded that this action is governed by maritime law. Under maritime law, claims for loss of consortium are not available. Igneri v. Cie de Transports Oceaniques, 323 F. 2d 257.

Dated 8-13-76

(Illegible)
J.S.C.

County Clerk's No. 10898, 1975
Spec I Liber A66 Line 2, 1976

APPENDIX B

Opinion of New York State Supreme Court
Appellate Division, First Department

At a term of Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on November 29, 1977.

Present

HON. THEODORE R. KUPFERMAN,
Justice Presiding,

SAMUEL J. SILVERMAN,
ARTHUR MARKEWICH,
PAUL J. YESAWICH, JR.,
Justices.

GILBERTO ALVEZ,
Plaintiff-Appellant,

—against—

AMERICAN EXPORT LINES, INC.,
Defendant, Third-Party Plaintiff-Respondent,

—against—

JOSEPH VINAL SHIP MAINTENANCE, INC.,
Third-Party Defendant-Respondent.

An appeal having been taken to this Court by the plaintiff-appellant from the order of the Supreme Court,

Appendix B

New York County (Nadel, J.), entered on August 17, 1976, denying plaintiff's motion to amend his complaint and bill of particulars, and said appeal having been argued by Mr. Paul C. Matthews of counsel for the appellant, and by Mr. Stephen K. Carr of counsel for respondent American Export Lines, Inc., and by Mr. William M. Kimball of counsel for the respondent Joseph Vinal Ship Maintenance, Inc.; and due deliberation having been had thereon, and upon the memorandum decision of this Court filed herein,

It is unanimously ordered that the order so appealed from be and the same is hereby reversed, on the law, without costs and without disbursements, and the motion granted.

ENTER:

Clerk.

APPENDIX B (continued)

Order of New York State Supreme Court, Appellate Division, First Department

KUPFERMAN, *J.P.*,
SILVERMAN, MARKEWICH, YESAWICH, *JJ.*

1131N

GILBERTO ALVEZ,

Plaintiff-Appellant,
P.C. Matthews

—against—

AMERICAN EXPORT LINES, INC.,

Defendant, Third-Party
Plaintiff-Respondent,
S.K. Carr

—against—

JOSEPH VINAL SHIP MAINTENANCE, INC.,

Third-Party
Defendant-Respondent.

W.M. Kimball

Order, Supreme Court, New York County (Nadel, J.), entered August 17, 1976, unanimously reversed, on the law, and the motion to amend the complaint granted, without costs and without disbursements. Plaintiff-Appellant in this maritime personal injury action has sought to add his wife's cause for loss of consortium. Defendant-respondent relied on *Igneri* v. *Cie. Transport Oceaniques,* 323

Appendix B

F. 2d 257 (1963) to the effect that such causes are not available under maritime law, and Special Term agreed. We do not consider that the applicable law in its present state is so clearly against such a cause being advanced at the pleading stage of the case. Such causes are currently held acceptable, one such case being *Sea-Land Services* v. *Gaudet,* 414 U.S. 573, a wrongful death case. We know of no reason why this should not be acceptable in a personal injury case. See also *Pesce* v. *Summa Corp.,* 54 Cal. App. 3rd 86.

Order filed.

APPENDIX C

Order of New York State Supreme Court, Appellate Division, First Department, Granting Motion to Appeal to New York State Court of Appeals

At a term of Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on February 16, 1978.

Present

HON. THEODORE R. KUPFERMAN,
Justice Presiding,

SAMUEL J. SILVERMAN,
ARTHUR MARKEWICH,
PAUL J. YESAWICH, JR.,
Justices.

M-88

GILBERTO ALVEZ,
Plaintiff-Appellant,

—against—

AMERICAN EXPORT LINES, INC.,
Defendant, Third-Party Plaintiff-Respondent,

—against—

JOSEPH VINAL SHIP MAINTENANCE, INC.,
Third-Party Defendant-Respondent.

The above-named defendant, third-party plaintiff-respondent having moved for leave to appeal to the Court of

Appendix C

Appeals from the order of this Court entered on November 29, 1977.

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the affidavits of Stephen K. Carr and William M. Kimball and the communication of Stephen K. Carr, dated January 16, 1978 in support of said motion, and after hearing Mr. Stephen K. Carr and Mr. William M. Kimball for the motion, and no one appearing in opposition thereto,

It is ordered that said motion be and the same hereby is granted and this Court, pursuant to CPLR 5713, certifies that the following question of law, decisive of the correctness of its determination, has arisen, which in its opinion ought to be reviewed by the Court of Appeals:

"Was the order of this Court, which reversed the order of the Supreme Court an abuse of discretion as a matter of law?"

ENTER:

JOSEPH J. LUCCHI
Clerk.

APPENDIX D

Majority and Dissenting Opinions of New York State Court of Appeals

GILBERTO ALVEZ, Respondent, v AMERICAN EXPORT LINES, INC., Defendant and Third-Party Plaintiff-Appellant. JOSEPH VINAL SHIP MAINTENANCE, INC., Third-Party Defendant-Respondent.

Argued February 15, 1979; decided April 3, 1979

Stephen K. Carr & Gary D. Stumpp, New York City, for Third-Party Appellant.

William M. Kimball & Peter M. Pryor, New York City, for Third-Party Respondent.

Paul C. Matthews, New York City, for Respondent.

OPINION OF THE COURT

JASEN, J.

To be resolved on this appeal is the question whether the wife of an injured harbor worker may seek recovery for loss of consortium occasioned by her husband's injury.

Respondent, while working as a ship's lasher aboard appellant's[1] vessel, the "Export Builder", was injured within the territorial waters of this State when struck by the handle of an allegedly defective tension jack, resulting in the enucleation of his right eye. After commencing this

[1] Appellant American Export Lines, Inc., impleaded respondent's employer, Joseph Vinal Ship Maintenance, Inc., as a third-party defendant.

action, respondent moved to amend his complaint to add his spouse as a party plaintiff in an action for loss of consortium. Special Term denied respondent's motion, reasoning that the general maritime law does not afford a remedy for loss of consortium. The Appellate Division unanimously reversed, granted respondent's motion and certified the following question: "Was the order of this Court, which reversed the order of Supreme Court an abuse of discretion as a matter of law?" The order of the Appellate Division should be affirmed and the certified question answered in the negative.

In denying respondent's motion, Special Term relied entirely upon *Igneri v Cie. de Transports Oceaniques* (323 F2d 257, cert den 376 US 949), in which the Second Circuit held that the spouse of a longshoreman injured while working aboard a vessel in Brooklyn harbor had no cause of action for loss of consortium whether caused by negligence of the owner or unseaworthiness of the vessel. (323 F2d, at pp 265-268, *supra.*) In reaching this conclusion, the court observed that maritime law will often draw upon the law of the land where clear precedent does not exist in the former. With respect to recovery for loss of consortium, the court posited that if an admiralty court found that "the common law recognized a wife's claim for loss of consortium, uniformly or nearly so," it would query why it should not similarly recognize such a claim. (*Id.*, at p 260.)

Upon examining the state of the common law, the court found that although the great majority of States recognized the existence of a cause of action by a husband for loss of consortium, only 12 jurisdictions permitted a similar recovery by a wife. In light of the absence of a clear rule either permitting or prohibiting such recovery, the court turned to a consideration of which rule best comported with then

existing principles of maritime law. Relying primarly upon the unavailability of such relief to the wife of an injured seaman under the Jones Act (US Code, tit 46, § 688), the court concluded that it would be anomalous to permit recovery for loss of consortium by the wife of a longshoreman, whether on a theory of negligence or unseaworthiness. (*Id.*, at pp 265-268.)

In the years since the Second Circuit's decision in *Igneri*, maritime law has not remained static but, like the common law, has undergone significant change. In 1963, the year of the *Igneri* decision, the Supreme Court's decision in *The Harrisburg* (119 US 199, 213), still ruled the day, holding the maritime law did not afford a cause of action for wrongful death. However, in 1970, the Supreme Court overruled *The Harrisburg* and recognized the existence of an action for wrongful death under the general maritime law. (*Moragne v States Mar. Lines*, 398 US 375, 409.) In so holding, the court left for future consideration the precise scope of the remedy recognized. (*Id.*, at pp 405-408.)

Further delineation of the breadth of the wrongful death cause of action afforded by general maritime law soon followed in *Sea-Land Servs. v Gaudet* (414 US 573), wherein the court held that a decedent's dependents may recover for, among other elements of damage, loss of society, which the court defined as including a decedent's "love, affection, care, attention, companionship, comfort, and protection." (*Id.*, at p 585 [footnote omitted].) The court was careful, however, to exclude from the concept of society recovery for mental anguish or grief.[2] (*Id.*, at n 17.)

In assessing the impact of these cases upon resolution of the issue before us, we proceed cautiously cognizant that it

[2] With this definition in mind, the terms consortium and society will be used interchangeably.

is the general maritime law that governs the rights and liabilities of the parties. (*Romero v International Term. Operating Co.*, 358 US 354, 373; *Garrett v Moore-McCormack Co*, 317 US 239, 245; *Celeste v Prudential-Grace Lines*, 35 NY2d 60, 62-63; *Matter of Rederi* [*Dow Chem. Co.*], 25 NY2d 576, 581, cert den 398 US 939; ALI Study of the Division of Jurisdiction Between State and Federal Courts, § 1316[b], at p 239 [Off Draft, 1969].) Were this a case in which State law were applicable notwithstanding the existence of a Federal question (see, e.g., *People v Payton*, 45 NY2d 300, 312), we would be free to render a decision on such Federal question differing from pertinent Federal court decisions save a controlling determination of the Supreme Court. (*People ex rel. Ray v Martin*, 294 NY 61, 73, affd 326 US 496.) To be distinguished, however, are those unique areas, such as admiralty and maritime matters, which either by Constitution or Congressional legislation have been deemed to require a uniform body of national law. (See, generally, Hart, Relations Between State and Federal Law, 54 Col L Rev 489.) In such areas not only does there exist a Federal question, but more importantly, an answer obtainable solely by recourse to Federal law. (Cf. *Teamsters Local v Lucas Flour Co.*, 369 US 95, 102.) Thus, notwithstanding the absence of a controlling Supreme Court decision, were there a uniform Federal rule, albeit one established by lower Federal courts, we would be bound in a case such as the one at hand to apply it.

It is, therefore, with great deference that we proceed to an analysis of the question before us. Critical to its resolution is the effect which *Moragne* and *Gaudet* have had upon general maritime law and in particular upon the continued validity of *Igneri*. Judicial interpretation of these developments has not been uniform, leaving uncertain whether

there presently exists a cause of action for loss of consortium in a personal injury action under the general maritime law. (Compare *Giglio v Farrell Lines,* 424 F Supp 927, mot for lv to app den No. 77-8014 [2d Cir, Feb. 17, 1977],[3] and *Lemon v Bank Lines,* 411 F Supp 677, dismd upon reconsideration in light of *Christofferson v Halliburton Co.,* 534 F2d 1147, affd without opn 562 F2d 1259, and *Pesce v Summa Corp.,* 54 Cal App 3d 86 [upholding cause of action for loss of consortium], with *Christofferson v Halliburton Co.,* 534 F2d 1147, *supra,* and *Wetters v Moore-McCormack Lines,* 1977 AMC 1529, and *Davidson v Reederie,* 295 So 2d 700 [Fla] [rejecting cause of action for loss of consortium].)

In our opinion, examination of the *ratio decedendi* of the *Igneri* decision reveals an erosion of its theoretical underpinnings so severe as to precipitate its collapse under its own weight. To begin with, unlike the state of the law of the land as to recovery for loss of consortium then prevailing, the great majority of States, including New York, now recognize such a cause of action by either husband or wife in a personal injury action.[4] In dispelling any argument

[3] *Giglio* was subsequently dismissed in its entirety. (No. 75 Civ 6359, SDNY, Jan. 5, 1979, app pending No. 79-7078 [2d Cir.]).

[4] The following States recognize a wife's cause of action for loss of consortium in a personal injury action either by statute or decisional law: (*Swartz* v. *United States Steel Corp.,* 293 Ala 439; *Schreiner* v. *Fruit & Equit. Life Assur. Soc.,* 519 P2d 462 [Ala]; *City of Glendale* v. *Bradshaw,* 108 Ariz 582; *Missouri Pacific Transp. Co.* v. *Miller,* 227 Ark 351; *Rodriguez* v. *Bethlehem Steel Corp.,* 12 Cal 3d 382; Col Rev Stat, § 14-2-209; *Yoner* v. *Adams,* 53 Del 229; *Gates* v. *Foley,* 247 So 2d 40 [Fla]; *Brown* v *Georgia-Tennessee Coaches,* 88 Ga App 519; *Nichols* v. *Sonneman,* 91 Idaho 199; *Dini* v. *Naiditch,* 20 Ill 2d 406; *Troue* v. *Marker,* 253 Ind 284; *Acuff* v. *Schmit,* 248 Iowa 272; Kan Stat Ann, § 23-205; *Kotsiris* v. *Ling,* 451 SW2d 411 [Ky]; Me Rev Stat, tit 19, § 167-A; *Deems* v. *Western Md. Ry. Co.,* 247 Md 95; *Diaz* v. *Lilly & Co.,* 364 Mass 153; *Montgomery* v. *Stephan,* 359 Mich 33; *Thill* v. *Modern Erecting Co.,* 284 Minn 508; Miss Code Ann, § 93-3-1; *Novak* v. *Kansas City Tr.,* 365 SW2d 539 [Mo]; *Duffy* v. *Lipsman-Fulkerson & Co.,* 200 F Supp 71; *Cooney* v. *Moomaw,* 109 F Supp 448; NH Rev Stat Ann § 507:8-a; *General Elec. Co.* v. *Bush,* 88 Nev 360; *Ekalo* v. *Constructive Serv. Corp.,* 46 NJ 82; *Millington* v. *Southeastern Elevator Co.,* 22 NY2d 498; *Clouston* v. *Remlinger Oldsmobile Cadillac,* 22 Ohio St 2d 65; Okla Stat Ann, tit 32, § 15; Ore Rev Stat, § 108.010; *Hopkins* v. *Blanco,* 457 Pa 90; *Hoekstra* v. *Helgeland,* 78 SD 82; Tenn Code Ann, § 25-109; W Va Code, § 48-3-19a; *Moran* v. *Quality Aluminum Casting Co.,* 34 Wis 2d 542.)

that a wife does not have as great a right to her husband's consortium as he to hers, we stated: "'The gist of the matter is that in today's society the wife's position is analogous to that of a partner, neither kitchen slattern nor upstairs maid. Her duties and responsibilities in respect of the family unit complement those of the husband, extending only to another sphere. In the good times she lights the hearth with her own inimitable glow. But when tragedy strikes it is a part of her unique glory that, forsaking the shelter, the comfort, the warmth of the home, she puts her arm and shoulder to the plow. We are not at the heart of the issue. In such circumstances, when her husband's love is denied her, his strength sapped, and his protection destroyed, in short, when she has been forced by the defendant to exchange a heart for a husk, we are urged to rule that she has suffered no loss compensable at the law. But let some scoundrel dent a dishpan in the family kitchen and the law, in all its majesty, will convene the court, will march with measured tread to the halls of justice, and will there suffer a jury of her peers to assess the damages. Why are we asked, then, in the case before us, to look the other way? Is this what is meant when it is said that justice is blind?'" (*Millington v Southeastern Elevator Co.,* 22 NY2d 498,

503-504, quoting *Montgomery v Stephan,* 359 Mich 33, 48-49.)

In addition to the absence of a rule at common law recognizing "a wife's claim for loss of consortium, uniformly or nearly so," (*Igneri v Cie. de Transports Oceaniques,* 323 F2d, at p 260, *supra*), the Second Circuit hinged its decision upon the anomaly it perceived in permitting a longshoreman's wife to recover for loss of consortium when the wife of an injured seaman would not be afforded a similar right under the Jones Act (US Code, tit 46, § 688). (323 F2d, at pp 266-268.) That such anomalies do exist in the remedies afforded injured maritime workers is, however, a currently accepted fact of life. For example, although the wife of a deceased longshoreman may recover for loss of consortium in a wrongful death action under the general maritime law (*Sea-Land Servs. v Gaudet,* 414 US 573, *supra*), recovery for wrongful death under the Death on the High Seas Act (US Code, tit 46, §§ 761, 762) is limited to pecuniary loss and does not afford a remedy for loss of a wife's consortium. (*Mobil Oil Corp. v Higginbotham,* 436 US 618.)

The Second Circuit's concern, in *Igneri,* with the absence of a clear common-law rule as to recovery for loss of consortium and with the avoidance of anomalous remedies in maritime law is clearly manifested in its observation: "If there were evidence that maritime law generally recognized a claim for negligent injury to such an intangible right, or if the common law clearly authorized a wife's recovery, the gravitational pull of such concepts with respect to the wife of a longshoreman might be stronger than that of the analogy to the statute, denying such recovery to a seaman's wife. But, with neither of these conditions realized, our duty to avoid capricious differences in treatment between

similarly situated persons forbids our fashioning a rule that would place the spouse of a harbor-worker in a different, and better, position that the spouse of a seaman." (323 F2d at p 267, *supra.*) We believe that the clear recognition by the law of the land of the right of a wife to recover for loss of consortium in a personal injury action, together with the recognition of such right in wrongful death actions under the general maritime law, exert, in the words of the Second Circuit, a "gravitational pull" of sufficient intensity to require recognition of respondent's claim. (See 2 Benedict, Admiralty [7th rev ed], § 12, pp 1-66—1-74; Comment, Loss of Consortium in Admiralty: A Yet Unsettled Question, 1977 BYU L Rev 133.)

In reaching this conclusion, we are cognizant that the Fifth Circuit has interpreted *Gaudet (supra)* as limited to authorizing recovery for loss of consortium under the general maritime law to wrongful death actions. (*Christofferson v Halliburton Co.,* 534 F2d 1147, *supra.*) Critical to the court's determination were two factors: first, its belief that recognition of a wife's claim for loss of consortium by 37 States is not indicative of a uniformity in the common law; and, second, its interpretation of *Gaudet* as holding that a cause of action for loss of consortium cannot accrue until the decedent's death. (*Id.,* at pp 1150-1151.)

With all due respect, we cannot agree with the *Christofferson* court's reasoning. Concerning the state of the common law, it is difficult to conclude that a clear rule authorizing a wife's recovery for loss of consortium in a personal injury action does not exist. In *Gaudet,* the Supreme Court surveyed State wrongful death statutes concluding that "[a] clear majority of States" permit recovery for loss of society. (414 US, at p 587, *supra.*) It supported this proposition by the finding that 27 of the 44 State and

territorial wrongful death statutes that measure damages by the loss sustained by beneficiaries permit recovery for loss of society. (*Id.*, at n 21.) In our view, it would be overly artificial to view the present state of the common law as to recovery for loss of consortium in a personal injury action as anything but nearly uniform. Moreover, we would also question the relevancy of the *Christofferson* court's statement: "Much of the change in the law has come about through statutory modification of the law, rather than change in the common law." (534 F2d, at p 1150, *supra.*) In our opinion, it matters little whether a State's recognition of the cause of action at issue is rooted in statute or decisional law.

As to the Supreme Court's reference to the accrual of a cause of action for loss of consortium, the factual setting in *Gaudet* is critical. There, the injured seaman had already recovered for his personal injuries prior to his death. Thereafter, his widow commenced a wrongful death action seeking as an element of damage recovery for loss of society. The trial court dismissed the action on the ground of *res judicata.* In affirming the reversal of this order by the Circuit Court of Appeals (463 F2d 1331), the Supreme Court stated: "Obviously, the decedent's recovery did not include damages for the dependents' loss of services or of society, and funeral expenses. Indeed, these losses—unique to the decedent's dependents—could not accrue until the decedent's death." (414 US, at pp 591-592, *supra.*) It is this language which the Fifth Circuit in *Christofferson* interpreted as implicitly limiting the right to recover for loss of consortium to wrongful death actions on the ground that a cause of action for loss of consortium does not accrue absent death. We would not read this language so broadly as it would appear to have been intended merely

to identify the widow's wrongful death action as an action separate and apart from the decedent's personal injury action, precluding application of *res judicata* principles.

In holding as we do today, we are sensitive to the limited role of the State court in maritime matters, bound as it is to apply Federal maritime law. In applying this body of law, we are equally sensitive to the well-settled principle that "certainly it better becomes the humane and liberal character of proceedings in admiralty to give than to withhold the remedy, when not required to withhold it by established and inflexible rules." (*Moragne v States Mar. Lines,* 398 US 375, 387, *supra,* quoting *The Sea Gull,* 21 F Cas 909, 910.) Examination of current maritime law reveals, in our opinion, an absence of any established and inflexible rule barring recognition of the claim before us.

Accordingly, the order of the Appellate Division should be affirmed, with costs, and the certified question answered in the negative.

Jones, J. (dissenting). I am obliged to dissent in observance of what I perceive to be proper jurisprudential restraint. All agree that in this maritime action instituted in State court Federal maritime law governs. Our sole responsibility then is to determine the applicable Federal law. If the present state of such law is reasonably clear, we are not free to speculate what it may some day come to be.

In *Igneri v Cie. de Transports Oceaniques* (323 F2d 257, cert den 376 US 949) the Circuit Court of Appeals for the Second Circuit, within the territorial boundaries of which circuit our court sits, decided explicitly in 1963 that loss of consortium was not recognized under Federal maritime law. That determination is recognized as binding on the Federal District Courts within the Second Circuit (*Tornatore v Koninklijke Nederlandsche Stoomboot Maatschappij, N. V.*

"Sinon", USDCEDNY, Docket No. 75 C 69 [Dec. 6, 1976]; cf. *Giglio v Farrell Lines*, 424 F Supp 927, mot for lv to app den 2d Cir., Docket No. 77-8014 [Feb. 17, 1977]).* It is urged, however, that the decision of the Supreme Court of the United States in *Sea-Land Servs. v Gaudet* (414 US 573) in 1974 impliedly if not expressly overruled *Igneri*. Plaintiff constructs an appealing argument to support that conclusion. Were the Federal slate clean and were we therefore free to resolve the issue, it might well be that this argument, buttressed by the expanding recognition of loss of consortium at the common law, should be accepted. Again, however, it is our discipline to follow the controlling decisions of the Federal courts. In *Christofferson v Halliburton Co.* (534 F2d 1147) the Circuit Court of Appeals for the Fifth Circuit not only adhered to the holding in *Igneri* but expressly concluded that *Igneri* was not overruled by *Gaudet*. In sum, whatever may be the differences of opinion among the Federal District Courts or the views expressed by other State courts, the only two Circuit Courts of Appeals which have addressed the issue have denied recovery for loss of consortium—one in our own circuit and the other, in the Fifth Circuit, which considered and rejected arguments that *Gaudet* had changed the law.

Not only, in my analysis, is the present state of the applicable Federal law clear, but even if it be recognized that

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* In *Giglio*, a panel of the Court of Appeals for the Second Circuit declined an express invitation to overrule *Igneri*. That the court thereby left standing the District Court's view that the time may have come for such overruling is not to be construed as approval or rejection of that view (cf. the denial of petitions for writs of certiorari by the United States Supreme Court). It is noted that the *Giglio* case has subsequently been dismissed in its entirety (USDCSDNY, Docket No. 75 Civ 6359 [Jan. 5, 1979]) and an appeal is now pending from that disposition (2d Cir, Docket No. 79-7078).

Federal maritime law, as is true of most fields of the law, is and should be subject to the dynamics of appropriate growth and refinement, in my opinion the responsibility for such development properly rests with the Federal courts. Whatever may be our privilege, indeed our obligation, as a common-law court to share responsibility for the evolution and responsiveness of the common law, it is not fitting that we should venture decisional contributions to the developmental processes of maritime law which is characterized by peculiarities, even idiosyncrasies. We are neither qualified by judicial experience nor, inasmuch as any decision we hand down will have no precedential significance in the Federal courts, can we be held jurisprudentially responsible for the determination which we decide to make.

Accordingly, under constraint of the present state of Federal law, I would reverse the order of the Appellate Division and deny the motion to amend the complaint.

Chief Judge Cooke and Judges Gabrielli, Wachtler and Fuchsberg concur with Judge Jasen; Judge Jones dissents and votes to reverse in a separate opinion.

Order affirmed, etc.